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In The
Supreme Court of the United States

ABIGAIL NOEL FISHER,

Petitioner,

v.

UNIVERSITY OF TEXAS AT AUSTIN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF *AMICI CURIAE* NATIONWIDE COALITION OF EDUCATORS AND CENTERS WORKING TO EXPAND EDUCATIONAL OPPORTUNITY FOR AFRICAN AMERICAN MALES IN SUPPORT OF RESPONDENTS

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Fisher v. Univ. of Tex., 758 F.3d 633 (5th Cir. 2015) ..... *passim*

Fisher v. Univ. of Tex., 133 S. Ct. 2411 (2013) ..... *passim*

Gratz v. Bollinger, 539 U.S. 244 (2003) 21

Grutter v. Bollinger, 539 U.S. 306 (2003) ..... *passim*

Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) 18, 20, 23

Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007) 13, 21, 29

Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) 12, 21, 27

Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project, 576 U.S. ___, 1355 S. Ct. 2507 (2015) 7

OTHER AUTHORITIES

2015 *State of the Science Implicit Bias Review*, Kirwan Institute for the Study of Race & Ethnicity 7

Altering the Course: Black Males in Medicine, Rpt. of the Association of American Medical Colleges (2015) 4

Black American Males in Higher Education: Diminishing Proportions (Henry T. Frierson, et al., eds., 2009) 19

TABLE OF AUTHORITIES – Continued

Page

BLACK MALES LEFT BEHIND (Ronald B. Mincey) (Urban Institute Press, ed. 2006) 8

Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 AM. REV. SOC. 167 (2003) 30

Cheryl Staats, *State of the Science Implicit Bias Review* (Kirwan Institute, 2013-15) 11

Daniel Kahneman, THINKING FAST AND SLOW (Farrar, Straus and Giroux, NY (2011) 7

Dolores Acevedo-Garcia et al., *Toward a Policy-Relevant Analysis of Geographic and Racial/Ethnic Disparities in Child Health*, 27 Health Affairs 321 (2008) 31

Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993) 30

Heinz Endowment's African American Men and Boys Task Force, *Portrayal and Perception: Two Audits of News Media Reporting on African American Men and Boys* (2011) 11

Jack Greenberg, *Affirmative Action in Higher Education: Confronting the Condition and Theory*, 43 B.C. L. REV. 521 (2002) 30

Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004) 11

TABLE OF AUTHORITIES – Continued

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Jennifer M. Ortman & Christine E. Guarneri, *United States Population Projections: 2000 to 2050* (2009) 10

Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) 11

Kirwan Institute, *A Common Guide to Understanding Democratic Merit*, http://kirwaninstitute.osu.edu/docs/Applied%20Democratic%20Merit.pdf (last visited October 30, 2013) 14

Lani Guinier & Gerald Torres, THE MINER'S CANARY (2002) 14

Liliana M. Garces, The Civil Rights Project at UCLA, *The Impact of Affirmative Action Bans in Graduate Education* (2012) 28

Marta Tienda et al., *Closing the Gap?: Admissions and Enrollments at the Texas Public Flagships Before and After Affirmative Action* (2003) 18

Mahzarin R. Banaji and Anthony G. Greenwald, BLINDSPOT, HIDDEN BIASES OF GOOD PEOPLE (Delacorte Press, N.Y. 2013) 7, 31

Martha Nussbaum, CULTIVATING HUMANITY: A CLASSIC DEFENSE OF REFORM IN LIBERAL EDUCATION (1997) 12

Michael J. Cuyjet, AFRICAN AMERICAN MEN IN COLLEGE (2006) 16, 17

M. Klarman, UNFINISHED BUSINESS: RACIAL EQUALITY IN AMERICAN HISTORY (2007) 31

TABLE OF AUTHORITIES – Continued

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Report of the National Advisory Commission on Civil Disorders (1968) (Kerner Commission Report) 6

Patrick Sharkey & Felix Elwert, *The Legacy of Disadvantage: Multigenerational Neighborhood Effects on Cognitive Ability*, 116 AM. J. SOC. 1934 (2011) 30

Patrick Sharkey, The Pew Charitable Trusts, *Neighborhoods and the Black-White Mobility Gap* (2009) 31

Poll: Blacks, Whites Agree, Police Treat Blacks Differently, USA Today (Sept. 10, 2015) 7

Philip Attiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (2014) 9

Roxane Harvey Gudeman, College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity, in Does Diversity Make a Difference? Three Research Studies on Diversity in College Classrooms (ACE/AAUP 2000) 24

Scott Jaschik, To Be a Black Man at UCLA, The Chronicle of Higher Education (Nov. 11, 2013) 19

Shaun R. Harper, Dellums Commission, Black Male Students at Public Flagship Universities in the U.S.: Status, Trends, and Implications for Policy and Practice (2006) ..... *passim*

TABLE OF AUTHORITIES – Continued

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The Disproportionate Risks of Driving While Black, New York Times (Oct. 25, 2015) 4

The State of Teacher Diversity in American Education (Albert Shanker Institute, 2015) 28

W.E.B. Du Bois, THE SOULS OF BLACK FOLK (1903) 5

William G. Bowen & Derek Bok, THE SHAPE OF THE RIVER (1998) 20

Ximena Zúñiga et al., *Action-Oriented Democratic Outcomes: The Impact of Student Involvement with Campus Diversity*, 46 J. C. STUDENT DEV. 660 (2005) 11

INTEREST OF *AMICI CURIAE*

Amici include a nationwide coalition of educators, programs and centers working to broaden the opportunities for academic and life success of underrepresented minority students nationwide, promote richly diverse learning environments in higher education, and expand educational opportunity for and the reduction of harmful biases about African American males.[1] (Listed in App. A). *Amici* are deeply interested in this case because its outcome could dramatically narrow the pathways into college for traditionally underrepresented minorities, with particularly pernicious effects on black males, whose increased presence at leading colleges and universities, including the University of Texas at Austin (UT), is sorely needed. *Amici*'s judgments are based on years of study and service, and decades of social science research concerning the steps still needed to safeguard educational opportunities for severely underrepresented black male youth.

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[1] Pursuant to Rule 37.2(a), all parties have consented to the filing of this brief and letters of consent have been filed with the Clerk of the Court. In accordance with Rule 37.6, *amici curiae* affirm that no counsel for either party has authored this brief in whole or in part, and no person or entity, other than *amici*, their members or their counsel, has made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Since this case was last before the Court, much has happened in the nation to underscore the importance of exposing all of our college students to richly diverse learning environments where they can develop core competencies in navigating sensitive lines of racial and ethnic difference. Each year selective universities like the University of Texas strive to perform this essential role for the nation, and the use of modest and holistic race conscious admissions has helped them do that. The meaningful inclusion of young men and women from a breadth of racial and ethnic backgrounds is critical to a university's ability to obtain the benefits of a diverse learning environment, and to assist the nation in its preparation of students for civic and leadership roles in a diversifying world. Banning race-aware holistic review in college admissions will impede that inclusiveness, with particularly negative impacts on black males, whose contributions to college learning spaces are sorely needed, as highlighted by recent widespread civic protest over the treatment of black males in this country.

The failure of researchers to disaggregate racial and ethnic college admissions and enrollment data by gender has obscured the fact that the numbers of black males at selective universities are stunningly low, even with the use of holistic race conscious review. The elimination of that tool will make this crisis even worse, and fuel harmful stereotypes about black

males at a time when the nation must do all it can to combat them.

A non-deferential review of the record in this case showed that, after seven years of experimentation with race-blind strategies, UT was unable to enroll a critical mass of black students on its campus. Black males in particular have been included in UT's entering classes at crisis-low levels. UT's modest and flexible reintroduction of race as one of a multitude of factors relevant to admission decisions for a slice of its entering class was thus a narrowly tailored approach grounded in its experience. This Court should uphold the strict scrutiny given by the United States Court of Appeals for the Fifth Circuit to UT's admissions program and affirm its finding that UT adopted narrowly tailored means to attain the educational benefits that flow from a richly diverse class.

ARGUMENT

Although the diversity efforts of institutions like UT rightly strive to include students from a wide breadth of identities, backgrounds, and talents, this brief will spotlight the special difficulties universities have experienced enrolling a critical mass of black males. Unlike other student populations, efforts to include greater numbers of black males on the campuses of selective colleges and universities have mostly stalled, leaving their numbers and percentages to rival levels they attained decades ago. *See,*

e.g., *Altering the Course: Black Males in Medicine*, Rpt. of the Association of American Medical Colleges, at 4 (reporting that fewer black males entered medical schools nationwide in fall 2014, than did in 1978).[2] *See also* The Disproportionate Risks of Driving While Black, New York Times (Oct. 25, 2015) (describing study of thousands of traffic stops and arrests in Greensboro, N.C. revealing wide racial differences in multiple types of policing).[3]

Lawsuits like that brought by Abigail Fisher have created the misimpression that universities are cordoning off college seats for large numbers of undeserving students of color. That perception is belied by the facts. *See Fisher v. University of Texas*, 758 F.3d 633, 657 (5th Cir. 2015) ("white students are awarded the overwhelming majority of highly competitive holistic review seats"). Enrollment data clearly show that selective universities like UT have labored unsuccessfully to enroll a critical mass of underrepresented minority students on their campuses even with the use of the critical tool of holistic, race conscious review. This is especially true for black males.

The low presence of black males in leading university settings has been hidden from public view in part because racial and ethnic enrollment data are

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[2] Available online at: https://www.aamc.org/download/439660/data/20150803_alteringthecourse.pdf.

[3] Available online at: http://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html?_r=0.

rarely disaggregated from gender data. When the numbers of black males and black females entering selective colleges nationwide are disaggregated, the *de minimis* gains made by black males in those entering classes become apparent.

Elimination of the tool that universities still need in order to include these students on our college campuses would be movement in the wrong direction at precisely the wrong time. Universities like UT continue to need race conscious full-file review processes to provide educational opportunities to black male youth and benefit from the unique contributions they can make to the learning experiences of their peers. Without this tool, the promise of black male youth will continue to be stifled. In 1903, Dr. W.E.B. DuBois cautioned the nation: "Throughout history, the powers of single black men flash here and there like falling stars, and die sometimes before the world has rightly gauged their brightness." W.E.B. Du Bois, THE SOULS OF BLACK FOLK, at 8 (1903). Investments in the college aspirations of black males are critical to their futures and the nation's learning, and race conscious holistic review is still needed to enable those investments to occur.

I. THE UNIQUE CONTRIBUTIONS AFRICAN AMERICAN MALES ADD TO COLLEGE LEARNING ENVIRONMENTS ARE IMPERILED WHEN UNIVERSITIES ARE UNABLE TO ENROLL THEM IN MEANINGFUL NUMBERS.

Since *Fisher I*, from Ferguson, to Staten Island, to Baltimore, and beyond, the nation has witnessed waves of civic unrest over police decision-making respecting black Americans, and a seemingly endless string of killings of unarmed black males. These deaths have focused new attention on racial justice concerns and fueled protests and riots not seen in this country since those studied by the Kerner Commission in the 1960s. *See* National Advisory Commission on Civil Disorders ("The Kerner Report") (1968). Although no data collection system exists to enable us to know the exact number of unarmed black males killed by the police each year – a shameful data-gathering neglect in and of itself – these events have stirred widespread concern that, far from having conquered the racial demons of our past, race continues to warp the judgments made daily about black males, even if unconsciously.[4] A recent poll conducted for the National Bar Association, the nation's oldest and largest association of predominantly African American

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[4] Nationwide, 26% of all shooting victims in the first four months of 2015 were black males, who constitute only approximately 6% of the US population. https://www.washingtonpost.com/national/fatal-police-shootings-in-2015-approaching-400-nationwide/2015/05/30/d322256a-058e-11e5-a428-c984eb077d4e_story.html.

lawyers and judges, asked participants if African Americans are treated differently by the police. Large percentages of black and White respondents answered, "Yes." Poll: Blacks, Whites Agree, Police Treat Blacks Differently, USA Today (Sept. 10, 2015).[5]

This developing worry finds ample support in decades of research respecting implicit biases, and the ways in which black males can be viewed and treated in harsher ways than other citizens *without* conscious animus. *See, e.g.*, Mahzarin R. Banaji and Anthony G. Greenwald, BLINDSPOT, HIDDEN BIASES OF GOOD PEOPLE (Delacorte Press, N.Y. 2013); Daniel Kahneman, THINKING FAST AND SLOW at 52 (Farrar, Straus and Giroux, NY, 2011) ("most of the work of associative thinking is silent, hidden from our conscious selves"). Studies have shown that the mere subliminal flash of a black man's face can evoke fear, cause subjects to evaluate ambiguous behavior as aggressive, lead test participants to misconstrue harmless objects as weapons, and discharge weapons at an erroneously perceived threat. *See* 2015 *State of the Science Implicit Bias Review*, Kirwan Institute for the Study of Race & Ethnicity at 9-16;[6] *cf. Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project*, 576 U.S. ___, 1355 S. Ct. 2507

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[5] Available online at: http://www.usatoday.com/story/news/nation/2015/09/09/poll-blacks-whites-agree-police-treat-blacks-differently/71918706/.

[6] http://kirwaninstitute.osu.edu/my-product/2015-state-of-the-science-implicit-bias-review/.

(2015) (Kennedy) (noting the reality of "unconscious prejudices"). Other studies show that daily negative judgments made about black males add up, accumulating over their lifetimes to create troubling levels of isolation, crippling impediments to their well-being, and depressed outcomes in virtually every realm of human life. BLACK MALES LEFT BEHIND (Ronald B. Mincey) (Urban Institute Press, ed. 2006).

One need only review a small number of the events that have transpired since this Court decided *Fisher I*, to sense the scope of the social justice challenge this presents to the nation. In September 2015, the city of Baltimore reached a $6.4 million settlement with the family of Freddie Gray, 25, following his death from a severed spinal cord that resulted from being transported, unbuckled, in the back of a police van. In July 2015, New York City agreed to a $5.9 million settlement with the family of Eric Garner, 43, whose videotaped chokehold death by a Staten Island police officer and the decision of a grand jury to bring no charges created nationwide outrage, "die-ins," and demonstrations reciting Garner's last words, "I can't breathe." In August 2014, the shooting death of Michael Brown, 18, in Ferguson, Missouri, sparked outrage around the nation and spawned other protest slogans, "Hands up, Don't shoot" and "Black lives matter." There have been many other notable losses of black male life as well – Jonathan Ferrell, 24, shot 10 times by a North Carolina police officer while seeking help after being in a car accident; John Crawford III, 22, shot by an officer

while holding an air gun for purchase in a Walmart store in Beavercreek, Ohio; and finally, Tamir Rice, shot by a Cleveland officer while holding a toy gun near a swing set in a public park. He was 12. *See* Philip Attiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (2014) (study showing that pictures of black males suspected of felonies were misjudged to be four or more years older than they actually were).[7]

Throughout the nation's history, the subordination and life experiences of black males have been unique, and common stereotypical portrayals of African American men can only truly be dispelled through increased positive, personal interaction. *See* Shaun R. Harper, Dellums Commission, Black Male Students at Public Flagship Universities in the U.S.: Status, Trends, and Implications for Policy and Practice 11-12 (2006); *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003) (recognizing that the "unique experience of being a racial minority in a society . . . in which race still matters" is "likely to affect an individual's views"). On campuses like UT, where many African American males are highly visible athletes, it can be particularly difficult to promote the perception of black males as intellectuals and campus leaders in non-sport activities. *See id.* at 14-15. Black males must be included in college entering classes in far

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[7] Published online: https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf.

greater numbers to communicate that students of all races have the intellectual capability to succeed.

The inclusion of too few black and Latino Americans in the nation's most selective college classes has hindered opportunities for interracial interaction and the stereotype dismantling that a genuinely diverse learning environment seeks to cultivate. The inclusion of meaningful numbers of underrepresented minorities on our college campuses, including black males, provides exposure to differences in racial, ethnic and cultural experience. This exposure can help prepare students of all races and ethnicities assume leadership roles and participate fully in the civic life of their state and local communities, activities that will grow in importance as the nation's demographics continue to shift. *See* Jennifer M. Ortman & Christine E. Guarneri, *United States Population Projections: 2000 to 2050* (2009).[8]

Despite the country's growing minority populations, the nation's neighborhoods remain heavily segregated, and college offers many students their first real opportunity to interact with peers of other races. Without the benefit of first-hand interracial friendships and interactions, perceptions of minorities, especially black males, are often based on popular culture and distorted images in the media, which can reinforce harmful stereotypes and deepen racial

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[8] https://www.census.gov/population/projections/files/analytical-document09.pdf.

misunderstanding. *See* Heinz Endowment's African American Men and Boys Task Force, *Portrayal and Perception: Two Audits of News Media Reporting on African American Men and Boys* (2011).

Studies conducted by the nation's leading social psychologists have shown how automatic negative associations linked to race can unconsciously influence behavior, even in persons with deep egalitarian values. *See* Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005). Implicit biases operate without the full awareness of their holders, often to the detriment of minorities. Studies reveal that these implicit mental "short cuts" can be especially harmful to black males when people unconsciously associate them with danger and criminality. *See* Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 876-77 (2004); *see generally*, Cheryl Staats, *State of the Science Implicit Bias Review* (Kirwan Institute, 2013-15).

Regular contact among the races helps to disrupt these harmful stereotypes, and to promote cross-racial understanding. Integrated campuses of higher learning enable these contacts to occur, and foster the development of leaders and citizens motivated to act in ways that promote a democratic, inclusive and just society. *See* Ximena Zúñiga et al., *Action-Oriented Democratic Outcomes: The Impact of Student Involvement with Campus Diversity*, 46 J. C. STUDENT DEV. 660 (2005) (showing interaction with diverse peers and diversity-related curricular and

co-curricular activities reduce student prejudice and promote inclusiveness).

When remanding this case to the Fifth Circuit, a 7-1 majority of this Court acknowledged this, making clear that a richly diverse student body "serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes." *Fisher v. Univ. of Tex.*, 570 U.S. ___, 133 S. Ct. 2411, 2417 (2013); *see also Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978); *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003). Recent events have cautioned the nation that much work remains to be done to counter the ubiquitous and easily triggered negative perceptions of black males that can impede their opportunities, and even threaten their lives. Universities like UT have an important role to play in that work, by enrolling black male youth in far greater numbers where they can help dispel these distorted perceptions through the examples of their intelligence, creativity, dedication and myriad talents. *See* Martha Nussbaum, CULTIVATING HUMANITY: A CLASSIC DEFENSE OF REFORM IN LIBERAL EDUCATION, 294-95 (1997) ("We do not fully respect the humanity of our fellow citizens – or cultivate our own – if we do not wish to learn about them, to understand their history, to appreciate the differences between their lives and ours.").

A. Top Percent Systems Prevent Experienced Admissions Officials From Identifying Students Who Are Capable Of Succeeding And Who Will Add Value To An Entering Class.

Employing individualized, full-file review, admissions officials comb through the files of aspiring college applicants to identify students with the ability to succeed in a competitive academic setting and the ability to add value to a diverse learning environment. Inevitably, top percent plans like that at UT will miss the promise of many of these students. Given the persistent difficulties higher education institutions have had including black males in meaningful numbers in their entering classes, admissions processes that are more individualized and less mechanical are preferable because they enable admissions officers to consider qualities exhibited by underrepresented minority male applicants that would go overlooked by a mechanical class rank approach. *Cf. Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 797 (2007) (Kennedy, J.) (individualized, non-mechanical assessments of applicants are preferable to group-level automated decisions). Top percent admissions strategies prevent flexible review of how an applicant's unique body of experiences and talents might contribute to the intellectual and social life of an academic institution, reduce toxic stereotypes, and build citizen harmony.

Further, universities have rightly rejected the core of Fisher's complaint: that test proficiency and class rank suffice to forecast an applicant's ability to succeed in college and capture all that is important about what he or she might add to an entering class. Research has shown that academic successes in high school convey more about the social advantages or disadvantages applicants experience as children than their academic promise and future participatory or leadership potential. *See* Lani Guinier & Gerald Torres, THE MINER'S CANARY (2002). Universities strive to include students who, among other things, are able to communicate with others different from themselves and build bridges across those differences for the common good. Alongside academic pedigrees, they weigh communication and leadership skills, commitment, drive, emotional intelligence, maturity, empathy, perseverance, engagement, creativity, cultural fluency, and more. Traits like these reveal themselves not through SATs and GPAs, but through personal essays, letters of recommendations, job histories, interviews, and else. Admissions officers must be permitted to search for them.[9]

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[9] *See* Kirwan Institute, *A Common Guide to Understanding Democratic Merit*, http://kirwaninstitute.osu.edu/docs/Applied%20Democratic%20Merit.pdf (last visited October 30, 2013).

II. HOLISTIC RACE CONSCIOUS REVIEW REMAINS NECESSARY FOR THE MEANINGFUL INCLUSION OF UNDERREPRESENTED MINORITIES, PARTICULARLY AFRICAN AMERICAN MALES.

Although there is a compelling need for inclusion of students of both sexes and all races and ethnicities on college campuses to fully secure the benefits of a diverse learning environment, *amici* focus here on the little appreciated crisis currently affecting black males that threatens the ability of UT and other selective universities to include them in meaningful numbers. Of all social groups, young black males suffer some of the greatest impediments to college matriculation and degree attainment. Banning carefully implemented race-sensitive holistic review of applicants will make this situation even worse.

While Petitioner would have this Court wish away UT's unsuccessful history utilizing "race-blind" strategies, facts matter, and the rosy portrait Fisher paints of the disproportionately small number of black and Latino students that UT managed to enroll before modifying its admissions practices is unworthy of this Court's celebration.[10] Race-blind strategies

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[10] It is undisputed that the undergraduate percent plan system at UT creates a measure of racial and ethnic diversity only by capitalizing on the highly segregated student populations in Texas' high schools. (There is good reason to question whether this can fairly be called "race neutral" at all, *see Fisher*, 133 S. Ct. at 2433-34 (Ginsburg, J., dissenting)).

were especially destructive of UT's efforts to include black males in its entering classes. Indeed, UT's disaggregated enrollment data show that, just as when Hermann Sweatt sat in his classrooms at UT by himself, black males have never reached levels at UT sufficient to constitute the "critical mass" needed to prevent their racial isolation. *Fisher*, 758 F.3d at 658 (Before it reintroduced race as a factor, "90% of UT's classes had one or zero African-American students, 46% had one or zero Asian-American students, and 43% had one or zero Hispanic students."); *cf.* Harper, at 1 (documenting that many black students report being the only non-white person, or one of few, in most of their classes, particularly at large flagship universities).

A. Black Males Are Especially Vulnerable To Exclusion From College Without The Use Of Every Available Constitutional Tool to Include Them.

Most of the research discussed in the briefs of the parties and *amici curiae* analyzes data of selective universities and colleges disaggregated by race and ethnicity, but not data disaggregated by race, ethnicity *and gender*. This obscures the reality that young black males are currently grossly underrepresented in the student bodies of selective universities across the nation, even where race conscious holistic admissions procedures are available to facilitate their inclusion in meaningful numbers. *See* Michael J. Cuyjet, AFRICAN AMERICAN MEN IN COLLEGE, vii, 7-13

(2006) (discussing black male underrepresentation and their resulting "invisibility" on college campuses); Shaun R. Harper, Dellums Commission, *Black Male Students at Public Flagship Universities in the U.S.: Status, Trends, and Implications for Policy and Practice* (2006) (discussing 2-to-1 imbalance of black women to black men). Because college admissions and enrollment data are rarely disaggregated by race, ethnicity and gender, the silent crisis of consistent and distressingly low black male enrollments at UT has largely been obscured. *See* Harper, *supra*, at 1 ("black students have long been treated as a monolithic group and data are not disaggregated by gender in most published research"); Cuyjet, *supra*, at 7-13. Disaggregated data shows that even with the use of holistic race conscious review, the numbers of black males are far too low to constitute a critical mass. The elimination of that tool will make this reality even worse.

B. Without Flexible Race Conscious Review Many Young Black Males Will Be Shut Out Of The Nation's Most Selective Colleges And Universities Where Their Numbers Are Disturbingly Small.

Fisher insists that race conscious holistic admissions procedures are no longer necessary and that race-blind procedures like UT's top percent system will suffice to secure adequate numbers of black and Latino students on college campuses. This claim is belied by data revealing that selective universities

and colleges have in fact labored to enroll meaningful numbers of underrepresented minorities in their freshman classes when prevented from considering applicants' race alongside multiple other factors. *See* Marta Tienda et al., *Closing the Gap?: Admissions and Enrollments at the Texas Public Flagships Before and After Affirmative Action*, 40-44 (2003) (documenting a decline in the enrollment of African American and Latino students after *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), at Texas's two most selective universities). The mechanical, race-blind admissions strategies heralded by Fisher will reduce their numbers and deepen this crisis even further.

The picture on the ground for black males is especially deserving of this Court's attention. While the rates of college admissions by other student groups have risen over the years, black male enrollment rates have not. In 2002, for example, out of the total of all students enrolled in all institutions of higher education in the United States – selective and nonselective, 4-year and 2-year – black males constituted the *same percentage that they accounted for in 1976* (4.3%). *See* Harper, *supra*, at 2 (documenting that black men remain "strikingly underrepresented" among collegians, enrolled in numbers now essentially the same as over 30 years ago). As a percentage of the student bodies at selective flagship universities, the figures are even grimmer. A 2006 study surveying the percentage of black males at the nation's 50 public flagship universities discovered that the average black male enrollment rate at these

institutions *was a stunning 2.8%. Id.* at 3-4. *See also Black American Males in Higher Education: Diminishing Proportions* (Henry T. Frierson, et al., eds., 2009).

At UT it is even lower. According to enrollment data that UT provided *amici* for this brief, over the past five years, black males have numbered over 150 in the entering freshman class only once, and that was in a year with an unusually large freshman class. In 2010, 141 black males were enrolled in a freshman class that numbered 7275; in 2011, 138 black males entered UT in a class of 7151; in 2012, 152 black males were included in a class of 8092; in 2013, 119 black males enrolled in a class of 7160; in 2014, 123 black males entered the freshman class of 7084; and in 2015, UT succeeded in enrolling only 142 black males out of a class of 7612.[11] The tendency to omit disaggregation analysis has hidden the extraordinary depth of the educational crisis that young black males face today.

Since *Fisher I*, black college students have begun to give voice to the depths of their isolation on leading college campuses. *See, e.g.*, Scott Jaschik, To Be a Black Man at UCLA, The Chronicle of Higher Education (Nov. 11, 2013) (protesting that UCLA enrolled only 48 black males out of a total 2418 males in its

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[11] Black females enrolled as full-time, first-time freshman during these same five years were as follows: 231 (2010); 238 (2011); 271 (2012); 221 (2013); 171 (2014); 259 (2015).

entering class). These conditions of isolation will worsen if pathways to academic opportunity for underrepresented minority students are blocked, which they will be if race conscious college admission processes are terminated too soon.

C. UT's Seven-Year Experimentation With The "Race-Neutral" Strategies Fisher Touts Failed To Achieve Critical Mass Of Underrepresented Minorities, And Especially Black Males.

A reversion to the enrollment experiences at UT prior to its reintroduction of race conscious holistic review would turn a blind eye on this crisis of black male enrollments. While restrained by the *Hopwood* ban, UT tried a number of the "race neutral" strategies Petitioner claims are workable alternatives to race conscious holistic review: it sought and attained legislation enabling it to admit the top ranked students from high schools statewide to capitalize on segregated student populations; it made scholarships available to minority youth to enable their attendance; it targeted recruitment efforts in areas with large minority populations; and it increased its emphasis on socioeconomic diversity in the admissions process. *See Fisher*, 758 F.3d at 647. But just as researchers had warned, none of those steps in isolation or combination prevented Latino and African American enrollments from dropping dramatically. *See id.* at 649; William G. Bowen & Derek Bok, THE SHAPE OF THE RIVER 51 (1998) (explaining why reliance

on socioeconomic factors will not suffice to admit a critical mass of African American students). UT's modification of its admissions system after *Grutter* enabled it to consider students who could contribute things beyond top high school grades, including UT's compelling interest in greater campus diversity.

D. UT Modeled Its Admissions Plan On The *Grutter* Plan, With Improvements That Made Its Plan Even More Narrowly Tailored.

When UT revised the way it filled seats in the slice of the entering class not selected through its percent plan system, it modeled its modifications on the program this Court deemed constitutional in *Grutter*. *See Fisher*, 758 F.3d at 653 (UT's program is "nearly indistinguishable" from the University of Michigan Law School's program). The modified admissions system steered clear of pitfalls that can render a race conscious plan unconstitutional, such as setting numerical targets, creating race-based set-asides, establishing separate tracks for majority and minority applicants (*Bakke*), awarding a pre-set number of points to members of certain minority groups (*Gratz v. Bollinger*, 539 U.S. 244, 275 (2003)), or failing to adopt safeguards that would ensure that persons under consideration were not reduced to their race, but evaluated on their individual promise. *See Parents Involved*, 551 U.S. at 788. UT also ensured that, when *implementing* that plan, its admissions officers did not consult daily tallies of the racial

composition of the incoming class, a feature that caused Justice Kennedy to question in his *Grutter* dissent whether the University of Michigan's program was effectively operating like a quota. *Grutter*, 539 U.S. at 389 (Kennedy, J., dissenting). These careful modifications made UT's admission processes even more narrowly tailored than the admissions system that *Grutter* approved. *Fisher*, 758 F.3d at 646.

Petitioner does not dispute that UT's holistic review practices apply to a much smaller part of its entering class than the one in *Grutter*. She simply seems to think that UT's percent plan system produced "enough" student diversity, in contrast to the judgment of the reviewing court that it did not. Admission and enrollment data maintained by the U.S. Department of Education Integrated Postsecondary Education Data System (IPEDS) – one of the few sites where disaggregated data is made publicly available – reveal the paltry number of black males who were enrolled as full-time (rather than part-time) students in UT's entering freshman classes.[12] Based on IPEDS data, at UT-Austin, black females

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[12] We focus on freshmen, rather than the entire student body totals that are so often used, to hone in on the distressingly small numbers of black males being included in UT's entering classes. Freshman students are often housed in dormitories separated from upper-class students, and frequently take introductory-level classes with other freshmen during their first year of study. This makes the entering class an appropriate subject of focus as respects critical mass.

have outnumbered their black male counterparts every year from 1994 to 2013.[13] *See* Figure 1, App. B.

IPEDS data also show that UT's Top Ten Percent system, which Fisher argues is capable of producing a critical mass of underrepresented minorities, had only limited success in including black males in UT's freshman classes after the devastating impact of the 1996 *Hopwood* ban. *See Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996). In the two years prior to *Hopwood*, UT enrolled 123 black males as full-time first-time freshmen in its entering class (1995) and 105 the following year (1996). After *Hopwood* banned the consideration of race in 1996, this already small number fell precipitously, by 32 students: in Fall 1997, UT enrolled only 73 black males among the 6,945 full-time first-time freshman class, and only 79 black males among its Fall 1998 freshman class of 6,598 students. *See* Figures 1 & 2, App. B.

As one would expect, the Top Ten Percent admissions system instituted in 1998, improved on these dreadful *Hopwood* era numbers, if somewhat erratically. IPEDS data show that, with the percent plan in place, the number of full-time first-time black male freshmen at UT increased to 113 in 1999, then to 118 in 2000, then back down to 91 in 2001, up to 103 in 2002, but then down again to 100 in 2003. *See* Figure

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[13] Available online at: https://nces.ed.gov/ipeds/datacenter/.

1, App. B. By no stretch of the imagination was this a "critical mass" of black males.[14]

After *Grutter*, and years of concern that even with the help of its top percent admission system during the *Hopwood* era had not enabled it adequately to increase the number of underrepresented minorities on its campuses, UT conducted a study that revealed: black and Latino students had a very small presence in its most popular size classes; minority students felt racially isolated on campus; and majority students thought there were insufficient minority students at UT to enable them to achieve the benefits a diverse learning environment could yield. *See Fisher*, 758 F.3d at 658. These conclusions echoed experiences elsewhere. *See, e.g.*, Harper, *supra*, at 6 (documenting that many black students report being the only non-White person, or one of few, in most of their classes, particularly at large flagship universities).

In 2004, UT added a *Grutter*-based race conscious review component for the slice of its class not automatically admitted under the top percent system, enabling its admissions officers to consider race and ethnicity among a panoply of other factors in the full

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[14] Roxane Harvey Gudeman, College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity, 37, 45, in Does Diversity Make a Difference? Three Research Studies on Diversity in College Classrooms (ACE/AAUP 2000) (reporting that when asked to define "critical mass" the majority of faculty reported a percentage they had never taught).

file review process in order to improve this disappointing record. This change helped UT identify promising students of all races and ethnicities who could add backgrounds and experiences beyond top grades to its entering freshman classes. Even with those critical adjustments, however, UT has struggled to create a critical mass of underrepresented minorities, particularly as respects black males, and Fisher's arguments would reduce their numbers even more, at a time when we need more contact among students of different races, not less.

At our request, UT provided *amici* data about the number and demographic profile of the students it admitted through its percent plan system from 2004 through 2015, and the number and profile of students admitted through its *Grutter*-based full-file review system during the same period, to hone in on the special challenge of low black male enrollments. When reviewing these shockingly low numbers, it is sobering to consider how many fewer black males with the potential to succeed would have enrolled at UT had the university been prevented from considering the value they could add to its learning spaces as a part of the *Grutter*-based holistic review system.[15]

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[15] The threshold percent necessary for automatic admission to UT Austin began to shift each year depending on the number of applicants with top grades seeking admission to the Austin campus, after the state legislature capped the "automatic admits" to 75%. In 2015, seniors had to graduate in the top 7% of their class to be automatically admitted.

Instead, because the university utilized both the percent plan admission and full-file review to include black males in its entering classes, the overall percentages of its black male enrollees from 2004 to 2013 looked like this:

Year	**Percentage of UT's enrollments comprised of Black males graduating in the Top Percent of their H/S classes:**	**Black males enrolled under *Grutter* full-file review system (raw #)**	**Top Percent and the *Grutter* full-file review systems combined to enroll this percentage of Black males at UT**[16]
2004	0.94%	50	1.68%
2005	1.11%	47	1.80%
2006	1.12%	61	1.94%
2007	1.22%	73	2.19%
2008	1.36%	30	1.8%
2009	1.42%	28	1.81%
*Using Black or African American (alone) males **combined with** Black or African American (Two or more races, excluding Hispanic) males hereafter*			

[16] These figures represent black males as a percentage of the total enrolled freshman class at UT during these years. In years 2013, 2014 and 2015, the percentages do not include PACE students, i.e., students who are allowed to take a course at UT but whom are actually enrolled at a local community college.

2010	1.46%	35	1.94%
2011	1.3%	45	1.93%
2012	1.06%	66	1.88%
2013	1.06%	43	1.66%
2014	0.97%	54	1.73%
2015	1.23%	48	1.87%

See Figure 5, App. B. These fluctuating figures also demonstrate that those implementing UT's *Grutter*-based reviews operated under no quota or predetermined numerical goal for black males, in compliance with the demands of *Bakke* and *Grutter*. *Cf. Grutter*, 539 U.S. at 390-91 (Kennedy, J. dissenting) (noting that UM's "narrow fluctuation bands" raised an inference of quotas).

It should go without saying that these combined percentages are no cause for celebration. Even with holistic race conscious review, the small number of black males enrolled at UT as a percentage of its entering classes plainly remains a compelling concern. Nevertheless, race conscious holistic review has enabled UT to identify and enroll promising black males whom it believed would contribute to the diversity of UTs learning environment from which myriad educational benefits flow. Recent events across the country counsel that their inclusion in far greater numbers is sorely needed.

E. Low Undergraduate Enrollments Fuel Low Graduate And Professional School Enrollments.

Fisher has failed utterly to explain (because she cannot explain) how a top percent system will enable medical schools, law schools and graduate degree programs to create richly diverse entering classes. The small numbers of underrepresented minorities at the undergraduate level fuel diversity challenges at the graduate and professional degree level, and no top percent plan strategy will remedy that challenge. *See* Liliana M. Garces, The Civil Rights Project at UCLA, *The Impact of Affirmative Action Bans in Graduate Education* (2012) (showing that bans on race conscious admissions procedures in states adopting top percent plans resulted in marked diversity declines in graduate programs).[17] Although students of color now constitute more than half of all public school students, from 1987 to 2012 the share of the nation's teaching force constituted by minorities – including black, Hispanic, Asian and Pacific Islander, American Indian and multiracial teachers – grew by only 5%. *The State of Teacher Diversity in American Education* (Albert Shanker Institute, 2015).[18]

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[17] Available online at: http://civilrightsproject.ucla.edu/research/college-access/affirmative-action/the-impact-of-affirmative-action-bans-in-graduate-education/garces-impact-affirmative-action-graduate-2012.pdf.

[18] Available online at: http://www.shankerinstitute.org/resource/teacherdiversity.

Restricting race conscious holistic review at the undergraduate level contributes "downstream" to diversity challenges at the graduate and professional level and the professions and workforces they feed. In 2009, only 7% of all American teachers were African American, and black males accounted for only 1% of that teaching pool. A study of black male faculty (at all ranks) at the nation's 50 public flagship universities in 2004 revealed similar scarcity: black men comprised only 1.1% of full-time faculty. *See* Harper, *supra*, at 6. Flexible race conscious admissions procedures that follow the guidelines of *Grutter* and *Parents Involved* have not been a total solution to these challenges, but they help admissions officials include underrepresented minorities in their undergraduate and graduate programs. Without this tool, these distressingly small numbers will worsen.

III. PATHWAYS INTO COLLEGE FOR UNDERREPRESENTED MINORITIES MUST BE KEPT OPEN WHILE THE NATION ADDRESSES DISPARITIES IN SOCIAL AND EDUCATIONAL OPPORTUNITIES WHICH FUEL UNCONSCIOUS BIASES ABOUT UNDERREPRESENTED MINORITIES, ESPECIALLY BLACK MALES.

More than 60 years after *Brown v. Board of Education*, 347 U.S. 483 (1954), America has yet to deliver on the promise of educational equality to all of its youth. African Americans continue to be disproportionately isolated from educational, economic and

social opportunities to a degree not experienced by any other racial or ethnic group, as neighborhoods provide widely disparate opportunities critical to the promotion of healthy child development and life success. *See* Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993); Camille Zubrinsky Charles, *The Dynamics of Racial Residential Segregation*, 29 AM. REV. SOC. 167, 197-99 (2003).

Prolonged exposure to extremely disadvantaged neighborhoods during childhood – a disproportionate reality for large percentages of black and Latino youth – has been shown to harm cognitive development and depress primary and secondary educational outcomes, impeding access to college and economic mobility. *See* Patrick Sharkey & Felix Elwert, *The Legacy of Disadvantage: Multigenerational Neighborhood Effects on Cognitive Ability*, 116 AM. J. SOC. 1934, 1935-36 (2011) (reviewing the literature). Holding open the doors to a college education for a state's most disadvantaged residents is a critical tool for reducing social disparity within a state's borders. *See* Jack Greenberg, *Affirmative Action in Higher Education: Confronting the Condition and Theory*, 43 B.C. L. REV. 521, 531-33 (2002).

Although poor children of all races suffer when exposed to such negative neighborhood conditions, research shows that black and Hispanic children are far more likely to live in areas of "high poverty" or "concentrated poverty" (where 20 or 40% or more of the residents live below the poverty line, respectively)

than white children. Sixty-six percent of black children born between 1985 and 2000 grew up in high poverty neighborhoods, compared to only 6% of White children. *See* Patrick Sharkey, The Pew Charitable Trusts, *Neighborhoods and the Black-White Mobility Gap* (2009);[19] Dolores Acevedo-Garcia et al., *Toward a Policy-Relevant Analysis of Geographic and Racial/Ethnic Disparities in Child Health*, 27 Health Affairs 321, 327 (2008) (finding black and Latino children were more than twelve times as likely as white children to be both poor and living in neighborhoods where poverty was the norm). Research demonstrates that boys of color generally fare worse in these challenging circumstances: they are more likely to be victimized by violence, they are overly disciplined from as early as preschool, and they are more likely to be pushed out of educational systems.

Not only do disadvantaged neighborhoods and unequal K-12 school experiences in the United States disproportionately harm black and Latino children, they simultaneously fuel unconscious biases about them and other members of their identity group, whether from those disadvantaged neighborhoods or not. *See* Banaji and Greenwald, BLINDSPOT, *supra*, at 206-09; M. Klarman, UNFINISHED BUSINESS: RACIAL EQUALITY IN AMERICAN HISTORY, 140-41 (2007). While the country continues its work to reduce these inequities,

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[19] Available online at: http.www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/PEW_SHARKEY_v12.pdf.

selective colleges and universities like UT must be empowered to look beyond the top decile of high school classes to discover other applicants exhibiting the potential to perform college level work who can add depth to an entering class, including diversity and the ability to help reduce the harmful stereotypes that continue to corrode the quality of minority lives. The still too-low numbers of black and Latino youth in selective colleges and universities send a soundless but powerful message: that they do not belong. Petitioner would amplify that message, at a time when the nation's institutions of higher learning must do all they can to deafen it.

CONCLUSION

The judgment of the Fifth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX A
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2. Shaun R. Harper, Ph.D., Center for the Study of Race & Equity in Education at the University of Pennsylvania

3. Dr. Jerlando F. L. Jackson II, Ph.D., Director & Chief Research Scientist at the Wisconsin's Equity and Inclusion Laboratory at the University of Wisconsin-Madison

II. Individual Signatories*

1. Dr. Shakeer A. Abdullah, Ph.D., Assistant Vice President at the Office for Equity and Diversity at the University of Minnesota

2. Dr. Walter R. Allen, Ph.D., Professor at the Graduate School of Education and Information Studies at the University of California, Los Angeles

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6. Dr. Derrick Brooms, Ph.D., Assistant Professor at the University of Louisville

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13. Philip T.K. Daniel, J.D., Ed.D., William and Marie Flesher Professor of Educational Administration and Adjunct Professor of Law at The Ohio State University

14. Dr. James Earl Davis, Ph.D., Bernard C. Watson Endowed Professor in Urban Education and Professor of Higher Education and Educational Leadership at Temple University

15. Dr. Tonia Durden, Ph.D., Educational Consultant

16. Dr. Donna Y. Ford, Ph.D., Professor in the Department of Special Education & Department of Teaching and Learning (secondary appt.) at Peabody College of Education at Vanderbilt University

17. Vivian L. Gadsden, Professor at the National Center on Fathers and Families at the University of Pennsylvania

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21. Tarek C. Grantham, Ph.D., Professor in the Department of Educational Psychology at the University of Georgia

22. Frank Harris III, Ed.D., Associate Professor in the Administration, Rehabilitation & Postsecondary Education Department (ARPE) and Co-Director of the Minority Male Community College Collaborative at the San Diego State University

23. M. Paul C. Harris, Ph.D., Assistant Professor of Counselor Education at the University of Virginia

24. David E. Harrison, Director of the Office of Diversity and Inclusion Student Services within the Max M. Fisher College of Business at The Ohio State University

25. Louis Harrison Jr., Ph.D., Professor in the Department of Curriculum & Instruction at The University of Texas at Austin

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50. Alfred W. Tatum, Dean and Professor at the College of Education at the University of Illinois at Chicago

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55. R. J. Luke Wood, Ph.D., Associate Professor & Ed.D. Director, Community College Leadership, Co-Editor, Journal of Applied Research in the Community College and Co-Director, Minority Male Community College Collaborative at San Diego State University

56. Christopher P. Chatmon, Executive Director, African American Male Achievement, Oakland Unified School District

57. Elliott Dawes, Former University Director, The City University of New York Black Male Initiative (2006-2014), LL.M. Candidate, at Columbia Law School

58. Gregory Hodge, The Brotherhood of Elders Network

59. Tyrone C. Howard, Ph.D. Professor, Associate Dean of Equity, Diversity & Inclusion, Director, UCLA Black Male Institute at the Graduate School of Education & Information Studies, at the University of California, Los Angeles

60. Barry Krisberg, Visiting Scholar, at UC Berkeley

61. Dr. Bryant T. Marks, Sr. Associate Professor, Dept. of Psychology, Executive Director, The Morehouse Research Institute on the African American Male

62. Chaunda Allen Mitchell, Ph.D., Director, Office of Multicultural Affairs & Director, LSU Black Male Leadership Initiative, at Louisiana State University

63. David Payne, Heritage Community Initiative

64. Ms. Arlethia Perry-Johnson, Vice President, Strategic Communications and Marketing, Kennesaw State University; and Project Director, University System of Georgia's African American Male Initiative

65. Ronald Zeigler, Ph.D., Director, Nyumburu Cultural Center, at the University of Maryland

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APPENDIX B

Data from the Integrated Postsecondary Education Data System (IPEDS)

Figure 1: Number of Black non-Hispanic Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, 1994-2013

Figure 2: Number of White non-Hispanic Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, Fall 1994-2013

Figure 3: Total number of Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, Fall 1994-2013

Figure 4: Percentage of all Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin that were Black Male Freshmen, Fall 1994-2013

Figure 1: Number of Black non-Hispanic Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, 1994-2013

Year (Fall)	Men	Women	Total
1994	120	192	312
1995	123	181	304
1996	105	152	257
1997	73	115	188

1998	79	117	196
1999	113	169	282
2000	118	169	287
2001	91	146	237
2002	103	162	265
2003	100	156	256
2004	113	194	307
2005	122	224	346
2006	140	242	382
2007	160	267	427
2008	120	254	374
2009	125	222	347
2010	115	204	319
2011	109	206	315
2012	113	234	347
2013	97	189	286

Figure 2: Number of White non-Hispanic Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, Fall 1994-2013

Year (Fall)	Men	Women	Total
1994	1937	1888	3825
1995	1988	2013	4001
1996	2051	2020	4071
1997	2229	2409	4638
1998	2083	2222	4305
1999	2142	2228	4370
2000	2268	2463	4731
2001	2086	2300	4386
2002	2258	2573	4831
2003	1745	2091	3836
2004	1747	2130	3877
2005	1744	2023	3767
2006	1799	2202	4001
2007	1757	2051	3808
2008	1584	1907	3491
2009	1722	1954	3676
2010	1603	1843	3446
2011	1530	1863	3393
2012	1657	2004	3661
2013	1398	1845	3243

Figure 3: Total number of Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin by Sex, Fall 1994-2013

Year (Fall)	Men	Women	Total
1994	3008	2951	5959
1995	3073	3139	6212
1996	3194	3087	6281
1997	3377	3568	6945
1998	3210	3388	6598
1999	3417	3508	6925
2000	3701	3859	7560
2001	3462	3746	7208
2002	3733	4112	7845
2003	2943	3542	6485
2004	3055	3695	6750
2005	3158	3633	6791
2006	3361	4008	7369
2007	3447	3973	7420
2008	3000	3679	6679
2009	3346	3853	7199
2010	3363	3870	7233
2011	3201	3873	7074
2012	3619	4417	8036
2013	3125	3993	7118

Figure 4: Percentage of all Full-Time, First-Time Degree/Certificate-Seeking Undergraduates at The University of Texas-Austin that were Black Male Freshmen, Fall 1994-2013

Year (Fall)	Percentage of Undergraduate Student Body that were Black Male Freshmen
1994	2.01
1995	1.98
1996	1.67
1997	1.05
1998	1.20
1999	1.63
2000	1.56
2001	1.26
2002	1.31
2003	1.54
2004	1.67
2005	1.80
2006	1.90
2007	2.16
2008	1.80
2009	1.74
2010	1.59
2011	1.54

2012	1.41
2013	1.36